

# AMERICAN STATE TRIALS

*A Collection of the Important and Interesting Criminal Trials which have taken place in the United States, from the beginning of our Government to the Present Day.*

**WITH NOTES AND ANNOTATIONS**

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**EDITOR**

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**1917**

**THE TRIAL OF ISRAEL THAYER, JR., ISAAC  
THAYER AND NELSON THAYER FOR THE  
MURDER OF JOHN LOVE, BUFFALO,  
NEW YORK, 1825.**

**THE NARRATIVE.**

Nelson, Israel, Jr., and Isaac Thayer<sup>1</sup> were the sons of Israel Thayer, a farmer residing near Buffalo, New York. Nelson and Israel, Jr., were married and had separate houses, but Isaac, being unmarried, lived at home. The land being very good, they had little trouble in raising enough for their support; but they were indolent and dissipated; they neglected their work for the tavern and shooting matches, and very soon found themselves in debt to many of their neighbors. In October, 1824, things had become rather bad and they were threatened with suits and even imprisonment for their debts, when there appeared on the scene a man named John Love, who came from nobody knew where, and who boarded with Nelson Thayer. Finding that Love had no regular employment, but had a good deal of money, from which he obtained his income by loaning it in small sums and for short periods, the brothers had recourse to him to relieve their

<sup>1</sup> They were born in Worcester County, Massachusetts, where their father was a farmer. He removed west in 1817 and settled on a farm in Erie County, New York, near a village called Boston. The land was fertile and the family had little trouble in raising enough from the soil to support them. But the boys were indolent and inclined to dissipation. In 1819, Nelson the eldest and in 1824 Israel, the second, married. They took up separate farms while Isaac remained at home. The two married ones soon got into debt and were threatened with lawsuits when John Love came to the place and boarded with one of them. It was not long before they began to borrow of him until they owed him a considerable amount, which they had no means of paying. At the time of the murder Nelson was twenty-five, Israel twenty-three, and Isaac just twenty-one years of age.

financial embarrassment. But it was not long before they were in the same trouble with Love that they were with their neighbors. Their affairs getting worse day by day and seeing no way to settle with Love, they formed the idea of taking Love's life, thus relieving themselves of his claims and possessing themselves of his property at one stroke.

They talked the matter over for over a month before they could bring themselves to the starting point. They finally agreed that on the night of December 10 the deed should be committed. On that day Israel, Jr., was to butcher his hogs at his home and as that would cause much blood about the house they thought it a good time for their purpose. A boy who lived at Israel's, as well as Israel's wife, were induced to go on a visit to a neighbor and Love was invited to spend the night with Israel. Love was sitting by the fire talking to Nelson when Isaac came to the window and shot him through the head. But on finding that he was not dead he was dispatched by Nelson with a meat axe. They then threw the body out of the house and secreted it, and after Nelson and Israel had finished cutting up the hogs they carried it into the woods and buried it.

The brothers at once took possession of all of Love's cash and a number of notes made by themselves and others and commenced disposing of them. Finding a power of attorney necessary for the collection of the debts, they forged one and began suits for the demands. They gave out that Love had gone away, leaving them in charge of his property, and little suspicion seems to have been aroused, until late in February, 1825, when a body was found in the woods and identified as Love's. The three brothers and their father were at once arrested and taken to the Buffalo jail. They were indicted for the murder of John Love (the father having proved his innocence) and after two trials, one of Isaac and Israel together, and the other of Nelson alone, they were convicted of murder, and having made a full confession of the crime, on June 17 the three brothers were hanged on the same gallows, in a field near Buffalo, in the presence of over 20,000 spectators.

THE TRIAL.<sup>2</sup>

*In the Court of Oyer and Terminer, Erie County, Buffalo, New York, April, 1825.*

HON. REUBEN H. WALWORTH,<sup>3</sup> *Circuit Judge.*

*April 21.*

The prisoners, Israel Thayer, Jr., and Isaac Thayer, had been previously indicted for the murder of John Love and had pleaded *not guilty*.

*Herman B. Potter*,<sup>4</sup> District Attorney; *Sheldon Smith*<sup>5</sup> and *Henry Brown*,<sup>6</sup> for the People.

<sup>2</sup> *Bibliography.* \*"Trial of Israel Thayer, Jr., Isaac Thayer and Nelson Thayer for the murder of John Love, at the Court of Oyer and Terminer of Erie County, at the court house in Buffalo, on April last, his honor Reuben H. Walworth, Circuit Judge for the Fourth Circuit, Presiding. Including their confession. Printed for the publishers, July, 1825." The title page of this report and the next two pamphlets are ornamented with pictures of three coffins.

\*"The Life, Condemnation, dying address and Trial of the three Thayers who were executed for the murder of John Love at Buffalo, New York, June 17, 1825. Buffalo. Printed for the publishers. 1825."

\*"The Life, Trial, Condemnation and Dying Address of the three Thayers, who were executed for the murder of John Love at Buffalo, New York, June 17, 1825. Buffalo. Printed for the publishers."

\*"Trial of Israel Thayer, Jr., Isaac Thayer, and Nelson Thayer, for the Murder of John Love, at the Court of Oyer and Terminer of Erie County, at the court house in Buffalo, on the 21st, 22nd and 23d days of April, 1825; before his honor Reuben H. Walworth, Circuit Judge for the Fourth Circuit. Including the Testimony, Arguments of Counsel, with the substance of the Charge to the Jury, the Sentence of the culprits, and their subsequent Confession of the crime. Reported for the publisher by James Sheldon, Counselor. Printed and published by H. A. Salisbury, Buffalo. 1825."

<sup>3</sup> WALWORTH, REUBEN HYDE. (1788-1867.) Born Bozrah, Conn. Admitted to the bar and began practice in Plattsburgh, N. Y. 1811. Representative in Congress, 1821-1823. Circuit Judge, 1823-1828. Appointed Chancellor of the State of New York, 1828, holding that office until it was abolished in 1848. Author of *Rules and Orders of the New York Court of Chancery*; *The Hyde Genealogy*. Died at Saratoga Springs, N. Y.

<sup>4</sup> POTTER, HERMAN B. Early lawyer of Erie County, N. Y. Settled in Buffalo, 1810, and began practice. Was prominent in or-

*Thomas C. Love,*<sup>1</sup> *Ebenezer Griffin*<sup>2</sup> and *Ethan B. Allen*, for the prisoners.

The COURT asked whether counsel for prisoners objected to their being tried together and they replied that they did not.

ganizing the Washington Benevolent Society, Federal Club, and first Masonic Lodge. Was appointed District Attorney of Niagara County two years before Erie County was formed, and held the office, 1819-1829. Had a large and successful practice and was noted for systematic industry, high integrity and kindness of disposition. Chancellor Walworth, who presided as Circuit Judge in the trial of the Thayers, for which Potter had arranged all the evidence, declared in later years that he had never known a case so well prepared and tried. Mr. Potter was known as General, from his connection with the militia. He amassed a large fortune. He died in 1854. See White (Truman C.), Erie County, N. Y.; Smith (H. Perry), Hist. of Buffalo and Erie County; Buffalo Hist. Soc., v. 4.

<sup>1</sup>SMITH, SHELDON. (1788-1835.) Settled in Buffalo, 1820, and continued in active practice until his death. Was powerful as an orator and delivered the address, October 26, 1825, when the first boat left Buffalo on the Erie Canal. Was one of the most reputable counselors of western New York. Remained devoted to the law and did not seek political position. See White (Truman C.), Erie County, N. Y.; Smith (H. Perry), Hist. of Buffalo and Erie County.

<sup>2</sup>BROWN, HENRY. (1789-1849.) Born Hebron, Conn. Graduated Yale, 1808. Admitted to bar about 1813 and began practice in Cooperstown, Otsego County, N. Y. Removed to Stark, Herkimer County, and served as Judge of County Court, 1823-1825. Established extensive mills and other industries in Stark. Returned again to practice in Cooperstown. Removed to Chicago, 1863. Justice of the Peace, Chicago, 1837-1839. City Attorney, 1842-1843. Published in 1844 "History of Illinois." Died of cholera, in Chicago. See Yale Biographies and Annals, 1805-1815; Bateman Hist. Enycy. of Ill.; Andreas Hist. of Cook Co., Ill.

<sup>3</sup>LOVE, THOMAS C. Judge Erie County Court, 1828. District Attorney Erie County, 1829-1836. Member United States Congress, 1841-1845. Died in Buffalo, 1853.

<sup>4</sup>GRIFFIN, EBENEZER. (1789-1861.) Born Cherry Valley, N. Y. Attended Union College two and one-half years. Admitted to Utica bar, 1811. Practiced at Clinton, Oneida County for eight years, then removed to Utica and practiced there until 1825, then removed to New York City. His reputation was state wide. Practiced in Court for Correction of Errors and in Supreme Court in numerous important cases. Distinguished, gifted and upright. Removed to Rochester in 1842 and died there. See Proctor Bench and Bar of N. Y.; Hist. Bench and Bar of N. Y.

The Clerk called the Jury.

John Barth being called.

Mr. Love. Have you made up an opinion as to the guilt or innocence of either of the prisoners.

The COURT. That question is improper. Have you formed and expressed an opinion as to their guilt or innocence?

Mr. Love. We object to any juror who has formed an opinion, whether he has expressed it or not, and think we can show that to be the proper question.

The COURT. The juror must have expressed an opinion, as well as formed it, if this is intended as a principal challenge, and not a challenge to favor.

Mr. Love. We except to the decision and insist upon the right to put the question whether the juror has made up an opinion; and if he had, to exclude him. If his opinion be made up, it is of little consequence to the prisoner whether it has been expressed or not. None of the authorities decide that the having formed an opinion was not sufficient to exclude a juror and the reason for it was as strong where an opinion had been formed, as where it had been expressed, if not stronger.

The COURT. A juror having expressed an opinion, it is to be presumed that he will be more biased and apt to adhere to it. than if he had not expressed it.

The juror was then peremptorily challenged.

The following jurors were sworn: James Clark, Thomas Decker, Reuben Rodgers, Geo. Blackman, J. P. Morey, S. Slade, O. Mansfield, L. Evans, M. Dunn, E. Knight, R. D. Crego, J. Brown.

#### THE DISTRICT ATTORNEY'S OPENING.

Mr. Potter. Gentlemen: The cause now to be submitted to you is the most important that can occur in human jurisprudence, a cause which requires the exercise of all your candor and intelligence. It has fallen to your lot to sit in judgment upon the lives of two of your fellow men. The prisoners stand indicted for the murder of John Love, have pleaded "not guilty," and have put themselves upon their country, which country you are. The crime charged is one of the deepest die, the most abhorrent and revolting to our nature; it equally shocks the feelings of the civilized man and the savage. We find in every human breast the same horror of the crime, the same dread and detestation of the perpetrators. The crime has been known from the beginning, it is to be heard of in our first records, we are not to look for its history in our statute

books alone. It is to be found in every page of the history of man. But for its punishment we look to the laws of the land, the laws of nature and the laws of God. It equally contravenes them all and all equally denounce the crime and declare the penalty. "Thou shalt not kill" is a law announced by the great lawgiver of the universe, to which nature and human reason, and the wisdom of ages have responded assent.

An essential ingredient of the crime of murder is malice, or the intention of killing. Malice is either express or implied; with the latter we have little to do, or with the implication of law in particular cases of homicide. Every killing of a human being is not to be accounted a murder. Malice aforethought, or a determination to kill is essential to constitute this crime. Judge Blackstone defines murder to be "the unlawful killing of any reasonable creature in the king's peace with malice aforethought, by a person of sound memory." Express malice is now the grand criterion which distinguishes murder from other killing. It is defined to be a sedate, deliberate determination of the mind, and a formed design to do the injury, which formed design is evidenced by external circumstances, as lying in wait, previous menaces, former grudges and concerted schemes.

From these definitions, I apprehend no difficulty as to the evidence of express malice in the case before you. As to John Love's death, it will be shown to have been most awfully and too successfully premeditated. We are next to make out by whom the crime was perpetrated, or rather that it was done by the prisoners, or that they were instrumental in it. For, if more than one person be engaged, it is no matter which gave the fatal blow, or discharged the fatal bullet; so as the others were present aiding, abetting or assisting in the act. The law in such a case makes them all principals. This inquiry will involve an examination of a long and tedious train of circumstances. And to this investigation I must invite your particular attention and solicit the fullest exercise of your patience.

When crimes so flagrant and so universally abhorrent as the one charged are committed, witnesses to the fact are not

often called upon. The murderer hides his head from humanity and the light. The deed is done in darkness and in private. The intention is to evade discovery, and resort is had to solitudes, where there is no human ear to hear, nor eye to detect, nor human arm to stay the fatal blow. Such was the case of the murderers of John Love. There was no suicide, as will clearly appear from the testimony. But whether murdered in the day time or the night, the foul deed is enveloped in midnight darkness. It will not of course be expected of me to produce positive evidence of the infliction of the blow, or the discharge of the bullet that launched him into eternity. From the nature of the case, that evidence does not exist for the public prosecutor. But I expect to prove such a train of circumstances, such a connected chain of facts, perfect in every link, as to remove from your minds every reasonable doubt; and possibly every vestige of skepticism that the prisoners are the murderers.

If you find satisfactory evidence of the prisoners' guilt, you are bound to act and I trust will independently decide them to be guilty.

As the evidence will be of the kind called presumptive, I will read an authority as to the nature of such proof. Phillips on Evidence says:

"The proof is positive, when a witness speaks directly to a fact from his own immediate knowledge; and presumptive, when the fact itself is not proved by direct testimony, but it is to be inferred from circumstances, which either necessarily or usually attended such facts. It is obvious, therefore, that a presumption is more or less likely to be true, according as it is more or less probable that the circumstances would not have existed unless the fact, which is inferred from them, had also existed; and that a presumption can only be relied on, until the contrary is actually proved. In order to raise a presumption, it cannot be necessary to confine the evidence to such circumstances alone, as could not have happened, unless they had been also attended by the alleged fact—for that in effect would be to require in all cases evidence amounting to positive proof—but it will be sufficient to prove those circumstances which usually attended the fact. If the circumstantial evidence be such, as may afford a fair and reasonable presumption of the facts to be tried, it is to be received and left to the consideration of the jury, to whom alone it belongs to determine upon the precise force and effect of the circumstances proved, and whether they are sufficiently



satisfactory and convincing to warrant them in finding the facts in issue. However, for the purpose of trying the weight and effect of such presumptive proofs it will often be of the utmost consequence to consider whether any other fact happened which might have been attended by the same circumstances, and with which of the facts they are more consistent.

"It has been very justly observed that when the proofs are dependent on each other, or when all the proofs are dependent upon one, the number of proofs neither increase or diminish the probability of the fact; for the force of the whole is not greater than the force of that on which they depend; and if this fails they all fall to the ground. But when the proofs are distinct and independent of each other, the probability of the fact increases in proportion to the number of the proofs; for the falsehood of one, does not diminish the veracity of another."

Positive proof, if unimpeached, precludes all possibility of error. Circumstantial leaves a possibility of mistake. But the latter is often more satisfactory and convincing than the former. A single witness may swear false. A number of unconnected and distinct circumstances, each depending on itself and proved by different witnesses all bearing upon the same point and tending to the same result, must together speak the language of truth. If circumstances are shown which the prisoners might rebut, but neglect or decline it, they must be taken strongly if not conclusively against them; and the conduct and efforts of the prisoners in such case being assisted by able counsel, will materially affect the force and influence on your minds of the circumstances which I am about to produce. I will not go into a detailed statement of the facts as I expect to prove them. The facts will present a horrible picture of human depravity and the terrible effects of human passions when urged on by vengeance or cupidity, and must necessarily rouse every breast to indignation. But I wish to give no occasion for the complaint that the jury had in the outset of the trial been prejudiced by the statements of counsel. The jury ought to be cautious and diligent in the investigation in proportion to the heinousness of the crime. The cause is an important one. The life and death of the prisoners are in their hands, and for the sake of justice and the peace of their own consciences the jurors should discharge their duty with caution and fidelity. Try them on

the law and evidence, not on the rumors or stories that are afloat. They had doubtless been tried over and over again in this county, and particularly in the circles in their neighborhood and perhaps generally pronounced guilty. But this was the first time they had been arraigned for a legal trial. This is the first time you hear of them or their offense—if they are guilty you must so find them. If so, they are unfit for human society. It will be urged to you that there exists great excitement in the public mind against the prisoners. There is excitement undoubtedly. But that there is or has been undue excitement on this occasion, I deny. On the announcement of so flagrant a murder as appears here to have been perpetrated, is it strange that excitement should prevail? The whole community ought at once to arm and turn out for the discovery of the felons. The alacrity and vigilance of the people of Boston is an evidence that their moral sense still exists and that virtue still prevails amongst them. With such a people your life and property may be considered safe. But prejudice or excitement cannot alter guilt or innocence. Truth is and will be the same.

#### THE TESTIMONY FOR THE PEOPLE.

*Daniel Inaalls.* Am a physician. Was called on 24th Feb., 1825, to hold an inquest, as Coroner, on a body found in Boston, near Israel Thayer, Jr.'s. There appeared to be a ball hole entirely through the head, which passed in at the right side of the head and out of the other. It would not produce instant death. He might have lived a few hours, perhaps days. There was another wound on the back of the head near the crown or vertex—fractured the skull bone—appeared to be done with the head of an axe. The effect of this wound would be to induce stupor and probably would terminate in death. There was another bruise behind the left ear, I believed to

have been given with the same instrument as the other, most probably the head of an axe. There was another wound across the face or cheek extending down to the wind pipe. Part of the cheek was cut down to the bone—not cut off. The flesh on the upper and lower jaws was partly cut off, so as to leave the bone bare on both jaws. The neck appeared to be broken. The two bones forming the bridge of the nose were broken down; flattened down entirely. The body appeared to have been partly frozen, especially the feet and fingers.

*Cross-examined.* Cannot determine whether the ball was from a pistol, a musket, or rifle;

as to the instrument that gave the wound on the back of the head, thought it an iron instrument, most likely an axe. Can form no judgment as to the time body had been dead, whether four, eight or ten weeks. That depends materially upon circumstances connected with his life, habits, manner of death and burial.

*Emmons S. Gould.* Am a physician. Examined this same body with Dr. Ingalls, on the 23rd or 24th of February. The wound through the head appeared to be made by a ball which entered on the right side below the angle of the eye, and came out close to the outer angle of the left eye. In passing down, the instrument appeared to have injured the bone, which appeared to be fractured; the under jaw was dislocated, or so injured by the blow, that the integuments had given way. The wound under the left ear was upon the hard bone. The skin was broken and flesh bruised, but could not discover that the bone was broken. It would require a hard blow to fracture that bone. These wounds must altogether produce instant death. The neck was dislocated at the atlas or first vertebra. I cannot say whether instant death would ensue. Judged there must have been two blows, one on and down the cheek, and another below, on the neck, which might dislocate it.

*F. T. Jones.* Found the body the day before the Coroner's inquest, in a field on Israel Thayer, Jr.'s land, about 30 rods from his house, near the footpath from Israel's to Irish's. The grave was directly in the old pathway. It had been an old road before the

land was cleared. The body lay in the old path near a large log. Think the grave might be seen from the new path. That morning while I was summoning the people to assist in making search for the body, Mr. Britton gave me some information that induced me to search this field of Israel's particularly. One of my company soon discovered the grave. The body lay as close to the log as a grave could be dug. The grave was short and narrow. The ground was frozen over the body. We dug down at about the middle of the body and found the great coat I had known Love wear. On opening the grave further we discovered the foot of the body. Left the grave and went to arrest Israel, Jr., and his father at Nelson Thayer's, whom I arrested, and came to Esquire Rector's. On my return to the grave the company had removed all the earth from around the body. It was laid on a board and carried to the school house, where the Coroner's inquest was held. Have no doubt it was the body of John Love. I have known him about two years. Requested Israel Thayer, Jr., to help me in the search. He declined, but gave no reason.

*John Stafford.* Am the person who found the body first, but was not there when he was uncovered, nor did I see his face until he was taken to the school house. There examined it and have no doubt it was the body of Love. Also knew his clothes.

*Cross-examined.* On my arriving near the place of the grave, I discovered that some things had been stirred—an appearance that some old chunks of wood had been moved. Called

out to the company that I had found him.

*Reuben Irish.* Live one mile from Nelson Thayer's and rather more from Israel's. Saw Love on 15th of December last about sundown at Nelson Thayer's door, holding his colt by the bridle. Mr. Washburn was there, and Nelson was chopping wood at his door. Love had on an old grey great coat, or a sort of roundabout. A cap on his head. Love and Nelson left there together and went toward Israel's. Israel went first, then Isaac, and Nelson and Love followed; Love on horseback, but being detained in mounting his horse, Nelson left him rather behind—he, however, soon overtook him. Have not seen Love since; do not know as he has since been heard of.

*Cross-examined.* To go from Nelson's to Israel's, you pass the sawmill, which is about 50 rods from Nelson's. When I saw them it was nearly dark, and they had not reached the sawmill. Think that Isaac did not go to Washburn's, as I went home with him and did not see him there; I have a strong impression that these prisoners left Nelson's together.

*Salmon Washburn.* Knew Love well, and saw him last on the 15th of December, at Nelson's, about sundown, as also these prisoners. They all four left there and went towards Israel's. Nelson got before Love while he was mounting his colt. Know the coat spoken of, and had often seen Love wear it. It was the same that I saw at inquest.

*William Thompson.* Saw Isaac on 15th of December at Nelson's. Saw Love after sundown pass

the sawmill with Nelson, and cross the bridge towards Israel's; and saw one of these prisoners just ahead. Cannot say positively that I saw Isaac there, but Israel was ahead and crossed the bridge first, before Nelson and Love.

*Sally Thayer.* Am wife of Nelson Thayer. Knew Love well. Saw him last at my house, but do not recollect the day; it was towards evening. Isaac was there in the morning, but went on a visit to Obed Gwynns, and returned in the afternoon and was there when Israel came. Love came there soon after. Israel asked Nelson to go and help him cut up his hogs, which he declined till morning, and said the pork would not spoil until morning. He then asked Love to go home and stay with him all night, which Love also declined, and said he would stay at Nelson's. Nelson concluded to go and help Israel; Isaac also consented to accompany them on Israel's request, and Love being again requested, said he did not care if he went if Nelson did. They then all left the house nearly together. It was then about sundown, and I saw no more of them that night, except Love was detained in getting on his colt. Saw no rifle with them that day, nor have I seen Love since that time. Isaac came back next morning early, before I was up. He did not live with us, he made it his home at Washburn's. He did not breakfast with me: think he said he had breakfasted at Washburn's.

*Pardon Pierce.* Live one mile from Israel Thayer's, nearly north. About 15th of December last, heard the report of a gun in

the night, at late bedtime, in the direction of Israel Thayer's. Thought there might be shooting at candles, as was sometimes the case at Nelson's. But the report was more directly from Israel's.

*Cross-examined.* Can distinguish between the reports of rifles and muskets. Muskets give a longer report, and which can be heard further. Was my opinion at the time that this was the report of a rifle.

*Betsey Rector.* Live about half a mile nearly west of Israel's, with father. Heard a report of a gun on the evening of 15th of December, in the direction of Irish's, probably after 10 o'clock.

*Cross-examined.* Heard no other gun in the evening last fall. On the Monday previous, Love had requested me to make some clothes for him, and said he would fetch them there the next Saturday, on which day I heard he was gone. Heard suspicions of his murder before any of the prisoners were taken up.

*Abigail Andrews.* Visited at Mr. Rector's on 15th December last. When I passed Israel's house, he was killing hogs.

*Cross-examined.* Went to bed about 11 o'clock that evening, and do not recollect of hearing any gun. Do not recollect of hearing a gun on any other night.

*Benjamin Sprague.* Live about half a mile from Israel Thayer's, nearly northeast. Heard a report of a gun on 15th December. My wife and I thought it nearly 11 o'clock in the evening; seemed to be about Israel's house. When I went in, wife asked me what the firing of a gun so late meant. Thought probably an owl might have gotten among some neighbor's hens.

*Rufus Andrews.* Live about 50 rods north of Israel's. Wife went to Rector's on a visit, but do not recollect the day. Heard the report of a gun one evening, a little before 11 o'clock.

*Daniel A. Pierce.* Am 11 years old—can read some, but cannot write. Must not, when on oath, tell a lie, but must tell all I know. I lived at Israel's when he killed hogs, and that evening Israel told me I might go home and stay that night. In the morning at daylight started to go back to Israel's. Met Isaac and Nelson, going towards Nelson's, about daylight. Got my breakfast at Israel's. Israel's wife said they had breakfasted two or three hours before I got there. After that time Israel sometimes asked me to go with him to the barn in the evening, to feed the horses; which I did several times. Once he called me out of bed to go with him, and I helped him feed the horses—I put out the hay, and he put it in the rack. He could have gotten the hay without me.

The *Prisoner's Counsel* wished to know the object of this inquiry—they could see no bearing it had upon the case, unless it went to show that Israel was conscience-stricken, and afraid to be alone in the night. *Mr. Potter* replied that such was the object; and observed that almost any person who had committed so foul a murder would recoil at being alone in the night.

*Pierce.* Was not always taken to the barn after the hogs were killed. Lived with Israel till he was taken up on this affair. Love had stayed there all night—had his colt in the barn, and slept with me. This was a few days,

say five or six, before we killed hogs. Saw his colt in Israel's barn two or three days after we killed hogs. Israel told me it was his own colt. It was kept there till Isaac took it away; and while there Israel took care of it. He said he was going out to do it, and that it was his colt. Have heard the Thayers say they did not believe Love was dead; and that they would have him brought back to this county again. Know of Love's staying but one night at Israel's. They then came together, and brought his colt. Have never seen him since that time. He used to wear a fur cap. Have not seen his cap since. Israel has a wife and a child of a few weeks old, and no other family, but a person named Mattison lived there and chopped wood a while.

*Barney Herrington.* About the 20th December last, heard Isaac say he had a note against me for wheat, which I had given to John Love. We were at P. Atwell's, but he did not exhibit the note. He told Atwell that he had a note against him, which he had given to Love. He told me that Love had cleared out—had gone away. Had heard such reports before, but only as coming from the Thayers. He said it was d—d strange that Love should find out that people were after him before others did. He demanded payment of the note, but did not say how he came by it.

*Cross-examined.* Do not know he stated any reason for Love's going away, at that time. Had previously heard of Love's having run away for forgery, committed in Pennsylvania—supposed Israel alluded to that. Delivered the wheat, on my note, at Ensign's mill, where it was

payable, and gave Isaac an order to get it, and he gave me my note. Took my name off the note and wrote the order on the back of it. Atwell told him he would want wheat for Christmas, and asked whether he would want wheat on his note? He agreed he would. I live about half a mile from Nelson's. Love was frequently in that neighborhood. He was a short man, not 5 feet 10 inches high, and would weigh about 130 pounds; and was from 25 to 30 years of age. Do not know as he was a very singular or odd man; never saw him quarrel; he was a temperate, sober man. For two winters he had been there trading and trafficking. In the spring he would go up the lakes, and return again in the fall. Know of no stated home or residence of his there. He was a close man, and made good bargains. People knew but little of his business, except from day to day. He often went off without people's knowing where. Never saw him have much money—have heard of his loaning money in small sums. Saw the body after it was taken up, and believe it to be his. Gave him my note for five bushels of wheat, at a year, for four bushels received of him.

*Wendell Morton.* Had heard that Love had run away; and about the Sunday before Christmas asked Isaac where Love was. He stated he had cleared out, gone—but did not say where. Told him I understood he had a clue on Love's property; he replied, he guessed likely enough he had. Told him if he had, and did not shave him as hard as he used to shave others that I would flog him—"Shave" was a mighty

word with Love—he answered, “Damn him, I guess he is where he will not trouble me.”

*Cross-examined.* Had understood that Love cleared out on account of having forged a note, somewhere up the lake. Understood Isaac’s last reply as alluding only to his absconding for the forgery.

*Borden Thomas.* Love had a note against me last fall for six and a quarter bushels of wheat. Isaac received the wheat of me and gave up the note. When he asked me for the wheat, he told me Love was gone off.

*Sylvester Irish.* In January, heard Isaac Thayer say Love was gone. Asked him how he had secured Love for the property he had gotten of his; he said he had secured him in no way. Told him I expected Love had all his articles of land; he replied that he could convince me to the contrary, for he then had part of them in his pocketbook, and produced an article of a lot on Chestnut Ridge, that formerly was Nelson’s. It appeared to have been assigned to Rector, and by him to Isaac. Had understood that a reward of \$1,000 had been offered for Love. Asked Isaac where he was. He asked my reason for the inquiry. Told him I wanted to know; he replied he did not know. Said we all thought he did know; that he always saw him when he went to Buffalo, or else when at a distance. Asked him if he would show Love to me for my oxen, or if I would add my rifle also. He answered, “No, by G—; I would not for \$200.” He had before this intimated that he saw Love when he went away, as he often did. Was at home the

night Israel killed hogs, and no gun was fired at my house. Isaac was there a part of the evening, when it was said they were killed. Heard of the circumstance that evening, and that Nelson was then with Israel cutting them up. Got home about sunset, or very near night. My family then consisted of my wife and three children, of whom the oldest was seven years. Isaac came there early in the evening and stayed perhaps an hour; Israel and his wife came in during his stay. He appeared to have come to bring his child, and returned immediately, leaving his wife behind. In the evening Mrs. Thayer sent Isaac home to get a diaper for her child. He was gone nearly an hour and returned with it, and he stayed but a short time. Mrs. Thayer stayed till late. When she sent Isaac home my wife offered to lend her something for her purpose, and requested her not to send him. She gave her something for her purpose, but I do not know whether she used it. Isaac, however, went and brought three, four or five diapers. Her husband came down after her, and he then stayed the best part of an hour. I saw no gun that evening. One morning before we were up, Isaac came in with his rifle, but I cannot say whether it was before or after the hogs were killed. He wanted it cleaned and cut deeper.

*Cross-examined.* Understood that Israel went back to cut up his meat after bringing his wife. He came after her as late as 9 o’clock, and stayed some time. Saw Isaac first, about dark; he then stayed about an hour. My wife offered Mrs. Thayer a towel for her child’s use, and Mrs. Thayer refused to use it. When

Israel came for his wife, we had some talk about cutting up his pork. He appeared in no hurry to go home; he went away between 9 and 11 o'clock. When Isaac brought his rifle in to be repaired, he set it down and said, "If you are going to cut my rifle, by G—d I want to know it." Told him I could not do it; but he left it and went away. Love's colt was some days at Israel's. Saw Isaac take him from Nelson's stable, and start for Buffalo. When he returned, asked him what he had done with it. He told me how hard he had rode, and how the colt hung his ears before he got to his journey's end. Heard Nelson tell him, perhaps you had better take the colt along, as you may find the short fellow—meaning Love—and if you do, deliver him up and let him do as he pleases with him. He led the colt, and rode another horse. They must have known that I heard Nelson's direction to Isaac.

*Mrs. Melinda Washburn.* When Isaac was under arrest for this, asked him why he did not tell where Love was; he replied he was so damned contrary that they could get nothing out of him. He represented that he knew where he was, and that he was some distance off. On 17th December, Isaac stayed at my house a part of the night. His father called him up, about 12 o'clock, and went away; he did not return that night. It was the night but one after Israel's hogs were killed. He had been away all night two nights before and said he had stayed at Israel's. He came next morning about sunrise and ate breakfast; told me he came to Nelson's, whose wife was not up, and so he came and

breakfasted at my house. The night he was called up he slept in the new part of the house; his father came in and asked where he was; went in and woke him and they came out together; he went away instantly, but Israel dressed and soon followed. All I heard the father say was, "Isaac, it is time to get up." He had slept at our house three or four nights. Think I saw Love on the 15th December ride towards Nelson's, on Nelson's mare. Heard no gun on the night of the 15th December. We live three-fourths of a mile from Nelson's. A few nights before, or after, there were, I presume, ten guns fired at Nelson's; if I had heard a gun on that night, I should not have thought it strange.

*Benjamin Fowler.* On 23rd or 24th December, purchased a colt of Isaac—a light, yellow 3-year-old colt, and paid him \$40. He mentioned that he was going on the next day, Christmas, to a shooting match. He led the colt and rode a bay mare. He was round the day before endeavoring to sell the colt, and said if he could not sell him to his mind, he should go to Batavia with him. Told me he lived in Boston, and that the colt was the same one that Thayer had down here in the fall; that he had him of his brother. Nelson, I knew, and he had a colt here in the fall.

*Judah Simons.* On 20th December, Israel met me about one mile from Nelson's. He was on Love's colt—a yellowish colt. He offered to sell the colt to me. Stated he had not bought the colt, but was authorized to sell it by Isaac, who had all Love's business to transact. Know both



the prisoners well. It was Israel who had the colt, and offered to sell.

*Sally Thayer.* Am wife of Nelson. Isaac came to our house on the 7th of December, in the fore part of the evening. The father was there at the same time and wished him and Nelson to help him at the mill in getting on a large log. They said they would not go then, but would get up before day and assist him. Isaac went away to Washburn's, where he then slept. The father went to bed. Between midnight and daylight he got up and called Nelson to put on the log. He then went away after Isaac and soon came back with him. Isaac then asked Nelson if he was not going to get up; and he then went away. The father came back in a few minutes, and said it was so dark that he would not then put on the log; and he lay down on the floor. Nelson and Isaac returned just before daylight. They took no lantern nor light with them; we had no lantern.

*William Thompson.* Tended the sawmill on 15th December, but was not there on the 17th. Left some logs on the way; do not recollect of any very large ones. The father is rising of 50 years old, and not a rugged man. He was not in the habit of sawing unless some one was with him.

*Rufus Andrews.* Saw Israel on the morning of the 16th or 17th December. He came to borrow flour. I had none—he turned to go away, but then turned back, and asked if I had seen Love. I answered, no. He replied that he did not know but I might have seen him come along down.

*E. Walden.* Isaac was brought before me on a *habeas corpus* soon after he was committed. The object appeared to be to fix a time for them to produce Love, or proof of his being then living to satisfy me. Asked Isaac where Love was, he said he was in Canada along the river between the Bertie Ferry and Queenstown; he could not tell me the exact place. Before Saturday the body was found. Isaac said he could easily produce Love by Saturday and wanted no longer time.

*N. D. Rector.* Isaac was before me on the 17th December to answer for Love in a suit where he was plaintiff; he told me that Love requested him to appear and answer, as he was going on to the east ridge. This suit was on a note which was in my possession. Had other demands of Love's. Had his demand against Isaac, amounting to \$275, for which he had confessed judgments on oath, and the executions were issued. The judgments were entered on the 4th December and the executions then were given to Love; have never seen them since. I had also judgments against Israel. Had other demands of Love's—two notes against Hilliker, about \$5.25. Isaac called on me to get Love's money in the case against Smith. Issued an execution against Israel for Love, of from \$7 to \$9, which was paid up into about \$1. Jones, the constable, called on Israel for it; Isaac said he had Love's power to settle it, and directed Jones to endorse it satisfied. Love told me in presence of Isaac that he had execution against Nelson on which he wanted to sell, to avoid some subsequent executions.

against him. Isaac was to bid in the property of Nelson and take the judgment of Love against Nelson, and the property was then to be instantly levied on as Isaac's, by those executions issued by me.

The *District Attorney* produced a power of attorney, purporting to be executed by John Love, empowering Isaac to collect, receive, settle and compound all demands due Love in Erie County, and to defend all suits against him; bearing date the 8th day of January, 1825.

*Mr. Walden.* The signature is not Love's handwriting. The name is not spelled right. The first time I saw that power, the name of Nelson was not on it as a witness.

*Cross-examined.* Am considerably acquainted with Love's handwriting, but am not much skilled in detecting forged hands. Love's writing is rather heavy—an old-fashioned hand.

*S. G. Austin.* Isaac called on me to draw this power, and it is my writing. They stated to me that they wanted a general power to transact all Love's business. That he was in some difficulty—was apprehensive of being arrested, and was secreted not far off, and had sent them to obtain the power, which would be taken to him for his signature. I told them it was unnecessary for Love to come to see me. I advised them not to have witness, as lawsuits might follow—to obtain that witness on every trial might be difficult; and if not witnessed, he might prove the power himself. They represented they could obtain his signature the next day. Have seen Love write

twice, and have his signatures in my office, which I have lately examined. The signature to this power does not resemble them much—I should not think it his.

*Amos Smith.* Love left a note with me for collection against Caleb Pierce. Isaac presented the power and demanded the money collected. Refused to pay over because I thought the power was incomplete, it not being witnessed. He afterwards presented it signed with Nelson's name as a witness to it. Then refused because I thought it forgery of Love's name. Love was a tolerable writer; he used often to be in my office writing on pieces of paper. He read well. The first time the power was presented to me, thought the signature was Nelson's writing—he sometimes writes well, sometimes not. Told Isaac that if Love was afraid of being arrested, he might call on me in the night and I would pay him. He replied, "My God, Love cannot do it; he is a damned sight farther off than people here have any idea of."

*Benj. Dole.* Saw Isaac the Saturday after Love was reported to be missing. He then had considerable money, a considerable roll of bills. He had been owing me for a year before this, and always complaining that he could not get money.

*E. Torrey.* Am a constable. I had an execution for Dole against Isaac, after he was put in goal; T. C. Love, Esq., sent the money to pay it up, as I understood. It was paid. Have examined the signature to the power and believe it not to be Love's writing. In the early part of January I told Isaac at my house, that it

was Love's object to add to his security, and that if he owed him he had better pay. He replied, "Give yourself no uneasiness, I have those executions in my pocket." He has told me that he had the sole control of Love's property. I arrested Isaac on this charge, on the 19th of February, and at that time I had Dole's execution. Told him that people supposed he had murdered Love, and that he had better find and produce him if he could. He said he could produce him, but if he could he would be damned if he would do it. He had paid me the taxes for his father, Israel and Nelson, in a town order of \$12 or \$12.50, payable to Aaron Benson. Love had told me that he had bought the order of Benson. Understood Love received it in that part payment of Benson's debt to him, on which I had the execution. Isaac told me he had Esquire Cary's note to Love, on which was due 20 bushels of wheat. There were notes to a considerable amount given to Love by Merriman, for some land. Isaac said he had these notes, and he intended to enforce the collection. On the examination of his father on the 19th or 20th of February, Isaac said on oath that he had seen Love and transacted business with him within two weeks. I think the Thayers were less embarrassed after the middle of December by executions than before that time.

*B. Dole.* When I saw the roll of bills in Israel's possession, saw Love's pocketbook, and think I sold it to him. Frequently saw him have it.

*James Ives.* Isaac had considerable money on the 10th Jan-

uary; he paid me two executions against Israel and Nelson, in all about \$17. He said he had money left—enough to pay all the debts they could bring against him and his brothers.

*Orin Treat.* Had an execution against Israel, in favor of James Ives, which I could not collect, but returned it unsatisfied. I found he had no visible property. Saw him in January, after I had returned the execution. He then said Ives had waited a good while, and should have his money.

*N. Smith.* Was at Ives' when his executions were paid up. Isaac told Ives he should pay up those executions, but if he trusted him any more, he might get his pay as he could.

*John Twining.* Saw Love last on 14th December. He came to me in my lot, about 80 rods from Nelson's. I told him I was going to Buffalo next day. I came down on the 15th of December and brought Love's order, dated the 14th, on Esquire Austin, for the money or an execution on his judgment against Bennett.

*George B. Green.* Came to Buffalo the night the body was found—went to the jail and told Isaac of it. First asked Isaac where Love was; he said in Canada. Said he saw him last on Saturday, 12th February—saw him down the Niagara river below Black Rock—that Nelson then went over the river and brought Love across; said he then paid Love \$17. That this was not the first time he had seen him since he went away; said he saw him first on the Big Tree road, in December last. Saw him again five or six miles beyond Williamsville, as he was riding

along he saw Love on the fence; that he then had business with him and paid him money; that Love lent Nelson some money to pay him a debt which he received that day; told him the body was found and where; he asked if I was there. I told him I was not, but that Smith had told me it was found. He said it was not so, for Love was in Canada, that he was alive and he had seen him down the river.

*April 22.*

*Reuben Irish.* On the night of 15th December, went to Washburn's. On my way down heard a gun fired, was going eastwardly to the coal pit then. Israel's was then east or northeast from me. The report was apparently behind me; cannot tell the time of night. The coal pit was, say, 10 or 12 rods from the house.

*F. Jones.* Had several executions against Israel in the fall and spoke to him about them. Had an execution of about \$1 against Israel, in favor of Love. He said Isaac would fix that. Isaac said Love ordered him to endorse it satisfied; and Nelson said Love directed Isaac to do so. After the prisoners were arrested I found a pocketbook at Nelson's, in a chest in the bedroom, containing \$300 or thereabouts of Love's demands. This book was found by me on the night of the examination of Israel and his father, the same day the body was found. The amount of the demands was about \$315. One note was payable in wheat; and some payable to Love, and some to bearer. Overheard Nelson telling about Love's going away. He said that Love had

cleared out—that there was a man came there, and said he was owing Love. That Love saw him and said he owed him nothing; and that if he did he would sue him at once. Isaac then cautioned Nelson as to what he was telling. Nelson said the man inquired for Love, and wished to pay him; but after seeing him, he said he was afraid he was after him for the forgery, and cleared out—avowing that that man owed him nothing. Knew Love well—he was a close man, and careful of his interest.

*Aaron Le Clear.* Was at Nelsons' on the 16th January. Nelson and Isaac went upstairs to look for my note to Love. Could not find it, but Nelson said he had got it. That Love had gone away, and left his pocketbook and notes at his father's, that Isaac went and got them, and handed them over, as people called for them. Then agreed to pay to them my note by delivering wheat. My note not being produced in the time, I took away my wheat. On the 10th February, Isaac and Israel came to me and demanded the wheat; and upon my refusing, Isaac said that there would be a lawsuit—that he should send me to Buffalo. On the 14th February, received a letter from Mr. Campbell of Buffalo, stating that my note to Love was left with him for collection; and if paid by a certain day it would save costs. Paid no attention, however, to the letter, and have heard nothing of it since. Had known Love for about five years. He has lived with me. On New Year's day, I spoke to Isaac about my note; he said he had it, or believed he had. Heard of Love's having run

away for forgery, from Nelson, about the 15th January.

*Cross-examined.* Israel and Isaac came with a team to my house for wheat. Israel said it was indifferent to him whether they got the wheat or not; but it was Isaac's just and honest due from Love. That I must pay the wheat to him, and settle with Love about the dishonesty of the note, of which I complained at the time.

*Sylvester Irish.* The night Israel's wife visited us, think I was up when Israel came for his wife. I have no recollection when the rifle was taken away from my house, nor whether taken away on the evening of killing hogs. Isaac has said that in all the shooting matches he had to be purser—foot the bills. I took it he meant the bills of the three brothers. This was after Love was missing.

*H. M. Campbell.* This winter received a demand to collect against Le Clear, and wrote the letter now produced. Am not confident whether Isaac left it. The note was in favor of Love, payable in wheat. Do not know Isaac. It is my impression that it was left by neither of these prisoners.

*Adam Rector.* Saw Israel on the day the body was found; he was 13 or 15 rods from the grave and coming in a direction from it. The body was found two and a half hours after this—he was going towards the sawmill and passed by S. Irish's—he was in the open field on his own land, not in any path. The place where the body was found was pretty much surrounded by sumac, briars and bushes.

*Charles Howard.* Saw all four

of the Thayers on Christmas at Arnold's, at a shooting match. Isaac had several bank bills. They came quite early, and shot a few times and Israel or Nelson told Isaac to give me a \$3 bill and let me keep my own account till they had shot out the money. He gave me a \$2 bill, and said he had money enough and was not afraid of his sixpences. Think he added that he had enough and that they cost him nothing.

*Catharine Britton.* Lived at Israel's a short time in November last; then stayed at Nelson's two or three days and then went home, which was about 1½ miles. Was at Israel's on the 6th of January and saw him there. I left there about the sun two hours high at night. Went from Israel's to R. Andrew's, then across to Irish's, as it was the nearest. Israel asked me to come back and stay at night, which I declined. He asked me which way I should go if I did not come back; I told him the path below the house—he replied that that path was bad and said I had better return by the way of his house. There were two paths, and which he meant, I do not know. I did not know then of the path leading by the grave. In going from Andrew's to Irish's, I might go by the grave by one path and not near it by the other. If I went back by Israel's to go to Irish's the path would not lead me by the grave; it went round it.

*Esquire Daniel Swain.* Examined Isaac and Nelson on the 19th and 21st. There was no inducements held out to Isaac on the examination, he was reluctant at first, but there was no threats nor promises used.

The examination of Isaac was read as follows:

*Feb. 19, 1825.*

Prisoner charged with murdering John Love, pleads not guilty, and saith the last time prisoner saw John Love in Boston was near the lower school house in Boston. Prisoner, Nelson and Love together, none others present; Love talked of his forging and other embarrassments, for which he expected to be pursued. Love then and there gave over all his obligations that were then due to prisoner, and called Nelson Thayer to witness the contract. Love then departed in haste; it was about sunrise in December last, but can't tell the day of the month—prisoner saw no other person, nor heard of any approaching or near them. Prisoner had never seen love but twice since; the first was some weeks thereafter, the last time was four or five weeks past, not less than four weeks—at both times prisoner saw Love in a field, nobody present nor near, had never seen Love in any house since he left Boston nor with any person, and further saith, he, prisoner, was gone two nights each time that he saw Love, that he went alone and returned alone both times.

The District Attorney offered to show what Isaac said on the examination of Israel, Sr., the father, on the 21st, upon which Isaac was sworn.

The Prisoner's Counsel object to the giving in evidence Isaac's testimony, as he was then under arrest and upon his own examination.

The COURT. The witness stated that he came forward voluntarily to testify; what he then says may be admitted. As to the objection to parol evidence of his testimony, the rule is that if the examination of the prisoner be reduced to writing, it will be evidence, and nothing, not in writing, can be heard; if not reduced to writing, parol evidence of it may be given. This being the testimony of Isaac, given on the examination of another person, does not come within the rule that makes an examination evidence, and therefore parol evidence only can be received, as to what he swore to or stated.

*Mr. Swain.* Isaac Thaver, on oath, said the last time he saw John Love in Boston, was from four to ten days after he parted with him at the school house, as related on witness' examination on the 19th inst. was with Love on the west hill, in witness' father's house, in the evening, and had seen him twice since, and no more; and further saith, when he parted with him at the school house, it was about sunrise, and Love handed him all his notes

and demands, and departed in haste as a man was approaching that Love heard was in pursuit of him—he did not have Love's pocketbook, but had the papers; and further saith, the other two times when he saw Love, was in the daytime—in a field both times. Had never seen him in a house, since he saw him at his father's, nor in company with any person. He went from home alone and returned alone, both times, and was gone two nights

both times, that he went to see him. The last time he saw Love was three or four weeks past, and knows he had not seen him within three weeks.

*Mr. Washburn.* Was present when Nelson's property was sold. Isaac bid the whole of it off—presumed it was bid in for Nelson—it went very low. Do not know the amount of the execution; think it was less than \$10. It consisted of one good sleigh, with steel shoes, 100 or 200 feet of siding, and four bushels of corn. Am well acquainted with Israel. He is illiterate—never saw him write.

*Mr. Swain.* The affidavit presented is signed by Isaac. It reads: "I swear by the ever-living God that I, Isaac Thayer, the undersigned, am John Love's lawful attorney, having received full power from said Love. Isaac Thayer. Sworn and subscribed to, this 10th day of January, 1825, before me, D. Swain, J. P."

*Mrs. Sally Thayer.* Recollect Isaac's leaving a red pocketbook at my house; he bought it. Saw him have it frequently, but it was after Love was missing. A pocketbook was found in the chest at my house, but not in Isaac's chest. Never heard any conversation between Isaac and Love about his managing Love's business. The book taken from the chest resembles the one here presented. Love had a large red, and a black pocketbook; this one taken from the chest is not either of them.

*B. Dole.* Think this pocketbook is the one Isaac bought of me, or like it. Sold him one of that size and description.

*Laura Wilson.* Recollect staying several nights at Nelson's last

December. Nelson was gone a good many nights.

*Mr. Rector.* Saw the body at the school house, and have no doubt it was Love's.

*N. Smith.* Knew Love when living—saw the body and great coat in the grave. I knew the scar on his forehead. He had said it was done with an Indian tomahawk. Discovered the same scar on the body.

*Mr. Stafford.* Knew Love well; was the first who found the grave. I knew the scar on the forehead, the pantaloons and great coat.

*Thomas West.* Knew Love—saw the body at the school house. Have no doubt it was him, though I knew of no marks on him. I perfectly knew the coat, and the handkerchief that was found round his neck. Heard the report of a gun in the direction of Israel's just before Christmas. Was then at Mr. Rector's. We thought Irish was cleaning his gun for Christmas. It must have been between 10 and 11 o'clock in the evening.

*Daniel Pierce.* This handkerchief is the same one that was taken off of the neck of the deceased.

*B. Williams.* Knew Love, but remember no marks on him. Saw all four of the Thayers on the 11th of January at Wilson's in Boston, at a shooting match. Isaac had then a number of bills, I should say 15 or 20. He paid the bill in the evening. Saw his pocketbook, it was about the size of this (the one in court). I saw them all there in the morning. The father paid the bill in the morning.

*Aaron Benson.* Knew Love. Saw him last on the 12th of De-

ember. I think he was going south. He had previously a judgment against me of \$27—I paid all but \$4 or \$5. I gave him Job Whipple's note, and a town order of \$12, payable to me. This was between the 1st and 10th of December.

*Cross-examined.* Before Love was missing, had heard reports of his forging in Pennsylvania. On the Monday after Nelson was arrested, conversed with Nelson and Isaac and advised them to produce Love, if he was to be found. Could get no satisfaction from them on the subject. Nelson said it would be impossible for any one to get him—he would fear such a person as E. Torrey. Offered to go myself, at my own expense, even if it was 300 miles; but they seemed to treat my advice and my offer lightly and with contempt or disdain, and I left them.

*Dr. Ingalls.* Israel was examined before me as a coroner. He was then under arrest for the murder. Before he testified he was told that he need not say anything that could criminate himself. Israel testified then that he saw Love last on the 16th day of December, the day after he killed hogs; saw him at Nelson's barn. That on the evening he cut up his hogs Love came up to his house with him. That he had previously a good many notes and supposed he had considerable money. That when he saw him last he had no great coat on.

*B. Curtiss, Jr.* Live south of Israel's, on the west side of the road, and was probably at or about home about the middle of December. Had a gun, but there was no other about there. Have

no recollection of its being fired by anyone. It was not by me. About the 10th of January, Isaac had about \$20 paid to him by Twining. Mr. Torrey called to collect the taxes. Isaac asked him how much the taxes of all the Thayers were. Israel was previously embarrassed pecuniarily. Knew little of Isaac; he had not, however, much money.

*Cross-examined.* Understood Isaac went to the East last summer to get money. Am a carpenter and joiner. In my shop I sometimes wrought late, and sometimes went to bed early. Saw Daniel Pierce carrying home the hog's pluck, and I think I was at the house that night, but do not know whether I was or not.

*S. G. Austin.* Delivered Love's execution against Bennett to Mr. Twining on the 15th December on the order of Love.

*B. Dole.* Saw Love last in the fore part of December; he then had considerable money. Borrowed \$5 of him for a few hours and paid him by a \$10 bill, which he put into one side of his pocketbook, with some, more than two, other \$10 bills, and took a \$5 out of the other side and paid me. He had several fives.

*Samuel Hambleton.* In the fore part of February, Isaac had some money at my house. He was about purchasing a harness and was to pay for it in grain. Saw a \$2 bill, and he said he had a five—he said he could pay me for the harness in cash. He told me he had bought a rifle, and that a few days before he had paid \$25 for it.

*Wilder Rice.* Saw Isaac have some money the day after Christmas; do not know how much, but he exhibited a bundle of



bills; he said he had just sold the colt at Buffalo. Saw him have money at no other time.

*N. D. Rector.* Israel was somewhat embarrassed previous to December. He came to me and inquired what articles were exempt from execution, and stated he had executions against him. Was at his house and observed some things were missing that I had seen there before; I believe he intended to secrete what was not exempt.

*A. C. Fox* testifies to the schedule of the demands found in the red pocketbook in the chest at Nelson's.

*George B. Green.* In the fore part of January last, I had a warrant against Isaac, in favor of White, or White & Swift. When I arrested him, he said they were mistaken in the man—that he had bags of money, enough to buy out White, or the whole of them. He afterwards paid out a \$10 bill to George White, and I saw he had two more left.

*Cross-examined.* Thought it was bragging at the time.

*Samuel Bennett.* Love had an execution against my son. I

went to Boston on business—saw old Mr. Thayer and Isaac at the sawmill. The old man told me he did not know where Love was, but he saw him the evening before going across the bridge. The conversation was in presence of Isaac. He did not know but Love might be at his house. He said he was a strange man, and he could not tell where he went to. Went to his house, about four miles—Love was not there; came back and met the old man and Isaac about half way. Old man then said he thought Love had gone to Batavia. Some one of them said Love was not at Esquire Rector's, as they had just come from there. I told them that I had some money to pay him; he replied, I might leave it with him or them; or Love would probably be over in a few days and see me.

*Cross-examined.* Had seen Isaac before, but did not know Israel or Nelson. Had seen the father; he had paid me a military fine. I cannot say that they all heard our conversation, but they all stood round near together.

### THE DEFENSE.

*Mr. Love.* Gentlemen of the Jury: The embarrassment under which I rise to address you, on the subject of this defense, is beyond the power of language to express.

On the one hand is a rigorous prosecution for the most damning of all offenses, conducted by an able, industrious and persevering prosecuting attorney, assisted by two associate counsel of distinguished ability, and great professional skill; and on the other hand, the lives of two fellow beings, in some measure committed to my charge, and staked upon the result of the issue I am called upon to defend.

May I not with propriety express myself in the language of inspiration and ask, "Who is sufficient for these things?"

I have not infrequently addressed a jury of my country from this place, on subjects involving the pecuniary interest, character and in some instances, the personal liberty of an anxious and confiding client; but it is the first time it has ever occurred in the course of my professional pursuits, that the life of my client depended upon the verdict to be taken.

In aid of this prosecution, the honest prejudices and prepossessions of the whole community, in which the crime charged against the prisoners at the bar was perpetrated, have been strongly enlisted; and each individual in order has been called upon the stand, with his recollection scourged and his memory quickened by the ingenuity of counsel, until he has been enabled to detail in the minutest manner, every suspicious act and thoughtless expression that have escaped these unfortunate men during the whole course of their eventful lives; and in each word, thought and deed these witnesses are made, clearly to discover, an index, as legible as the handwriting upon the wall, pointing to the prisoners as the murders of John Love.

That so bloody a deed, as the one portrayed by the learned counsel for the prosecution, at the commencement of this trial, and which, it will not be denied, his proof has fully established, should create sympathy and produce excitement, is creditable to the moral character and humane feelings of the citizens of Boston. God forbid that my lot should ever be cast upon a community so dead to the feelings of humanity, or so accustomed to the scenes of human butchery, as could remain passive and unmoved, amid such slaughter as has been disclosed in the evidence. No, gentlemen, the possession of our property, the preservation of our character, the enjoyment of our liberty, and even life itself, must always depend, in a greater or less degree, upon the notions and opinions, which the community in which we are located entertain of personal rights; and in proportion to the correctness of their estimate, will the honest indignation of that

community pursue the hardened villain who attempts their violation.

That John Love was most brutally mangled, butchered and murdered, at or about Boston, in this county, some time during the course of the last winter, through human agency, we shall not attempt a denial; the proof already adduced fully establishes that fact, as also that the body found on the 23rd of February last, was the body of the deceased.

But, gentlemen, while we freely indulge the most laudable feelings of our nature, which the mangled and lacerated body of the unfortunate Love is well calculated to inspire, let me caution you against substituting that sympathy, in the place of proof, for the purpose of fixing that murder upon the prisoners at the bar.

Does their case find no sympathy in your benevolent bosoms? Was a more solemn and interesting occurrence ever before presented to the consideration of a jury? A father and three sons, including a whole family, put upon their trial for the most aggravated of all offenses, and if convicted, the consequences of that conviction is to obliterate the recollection of their existence, leaving not even a name behind. But with this you have no more to do, as jurors, than with the cut and mangled remains of John Love; the question submitted to your consideration, and which you are called upon to determine is, whether the prisoners at the bar were, or were not, the perpetrators of that horrid deed.

This fact you are to decide and determine, upon the legal evidence to be produced on this trial; and not upon the conjectures and suspicions of witnesses that have been called before you to testify, nor upon any opinions you may have formed by hearing the fatal story a thousand times repeated, before you took your oaths and your seats, as jurors in this cause.

A correct definition of the crime charged in this indictment has been given by the prosecutor, in his opening remarks; and the different species of homicide have been by him correctly stated and defined—and as was premised by him, no question will arise, in the progress of this trial, whether the

killing charged is murder or manslaughter. It is conceded by the prisoners' counsel, that if the killing, in this case, is fixed by the proof upon the prisoners at the bar, it is murder. I shall therefore pass to the nature of the testimony upon which this prosecution is attempted to be sustained, and read to you from the books something on the subject of circumstantial testimony and the rules by which it is to be applied.

If, gentlemen, it is better that ten guilty men should escape than that one innocent man should suffer, agreeable to the long established and well settled maxim in the history of criminal jurisprudence, it will not be denied that in a case where three or four persons are suspected of an offense, in which all are not necessarily inculpated, and from the nature of the testimony, a difficulty should arise in fixing with legal certainty the offense upon the actual offender, it is better that all be acquitted, than that the innocent should suffer with the guilty. This just, humane and benevolent doctrine is sufficiently illustrated in the cases that have been read to you.

Again, gentlemen, I shall assume another position in sustaining this defense, and if I succeed in satisfying you of its correctness, I trust you will hear and apply the evidence in this cause, agreeably to the doctrine it inculcates.

The position is this: It is better that a guilty man escape the punishment due to his crimes, than that he should be convicted of an offense upon incompetent proof. The end does not always justify the means—in a system of laws for the regulation of society, where every offense is clearly delineated, and its punishment distinctly known, the rules of evidence and mode of proof in determining upon the guilt or innocence of the accused, forms the most important part of those laws, and is to be as strictly regarded by all courts and juries, as the law that defines the offense, and prescribes the punishment. And it is more dangerous to the rights of individuals, to vary the well known and long established rules of evidence, with a view to meet a particular case, than it would be to suspend the operation of a statute, to favor or

oppress a particular citizen. And as it regards the security of society, it matters not, whether the suspension or variation of the known rule is to convict the midnight assassin, or oppress the unoffending child of misfortune, wretchedness and want. For, let it be remembered that if courts and jurors should quietly suffer the salutary rules of evidence to be violated, in their mistaken zeal to punish a supposed offender, the only legal refuge of conscious and unsuspecting innocence is invaded, and the lives and liberties of our citizens become subject to the whim and caprice of a corrupt and profligate Judge. This doctrine, gentlemen, if correct, I desire you should bear in mind, while the testimony is unfolding before you, as well as in your final deliberations upon the fate of the prisoners.

The testimony on the part of the accused will not detain you a great while; it was impossible for the prisoners, or their counsel, to anticipate one of the thousand circumstances that have been given in evidence on this trial, to establish their guilt. They are necessarily unprepared to give the explanation in many cases, where it might have been very easy for them to do so. I will barely mention one circumstance on which I discover much stress is laid by the prosecution to inculcate Israel Thayer, Jr., in this business, and where he must necessarily be taken by surprise, and wholly unable to explain the circumstance, although an explanation the most satisfactory might have been given, had he been advised that such an occurrence would have been urged as an evidence of his guilt. It is this: It was proved by Mr. Ives that Isaac paid him a judgment he had against Israel, Jr., of about \$8. This is adduced to show that Israel, Jr., shared in the spoils of which John Love was rifled; first presuming that the money paid was money obtained by the murder of John Love. Now, although this prisoner, Israel Thayer, Jr., might have sold his last cow to obtain this money, and have sent the proceeds of that sale by his brother Isaac to satisfy the claims of this honest creditor, how, I ask, is the prisoner to prove that fact, without the least knowledge that it could become material; and tried as he is, at a distance of at least

twenty miles from where the transaction happened and where the purchaser of his cow, at this moment resides? I give this one instance, gentlemen, of the difficulty attending a satisfactory explanation being given by the prisoners at the bar, of every circumstance that has been detailed in the evidence, even in simple cases, and where they are susceptible of explanation the most satisfactory, and hope you will judge leniently, and in no case construe so simple an occurrence into a presumption of guilt, merely because no explanatory proof has been given, where your own reflection can easily account for the absence of such proof.

I shall now close these remarks, gentlemen, by charging you upon the solemnity of the oath you have taken, so to divest yourselves of prejudice and conjectures, which the often repeated story of murder and barbarity necessarily engenders, as that when you shall meet the prisoners at the bar, on the confines of eternity and in the assembly of a congregated world; where neither mystery, suspicion, or doubt can exist in relation to the transactions of mortals, that there in the awful presence of your God, and of their God, yours will be the felicity of knowing that you heard the testimony in this case with an impartial ear, and found your verdict upon the evidence given on the trial.

#### THE TESTIMONY FOR THE PRISONERS.

*Drs. J. Trowbridge and H. Rutgers Stagg* testified that the time of the decomposition of human bodies, and the decay of animal matter, depended most essentially upon the attendant circumstances; that there was no rule by which to determine from the state of decay or putrefaction, how long the body had been deprived of life. That a man in good health, dying without loss of blood, would decay sooner than a person out of health and emaciated. That some degree of

heat and moisture was requisite to facilitate the operation of decomposition; that the time must always depend on circumstances, the state of health at the time of death, habits of body, time and place of burial, the state of the atmosphere if the grave was so shallow as to allow that to affect the subject. In the case of Love, it would appear that some of the principal arteries were separated, and consequently almost all his blood must have been lost; and he was so slightly buried that probably the

frost penetrated the body, both of which circumstances must have delayed the decay and decomposition of the body.

*Sylvester Irish.* Do not know as Israel was the owner of the gun last December; have sometimes known of his having a gun, and sometimes he borrowed. He told me last summer that he lent Isaac \$4 to go to the East with. Israel and his wife came to make the visit spoken of about dark and he went very soon back again. During the time he stayed we had our ordinary common conversation; he spoke of his hogs and their weight.

*Sally Thayer.* When Isaac and Nelson came home from Christmas shooting, Isaac told me that Nelson had been obliged to sell him his clothes to pay for his shooting.

*W. S. Littlefield.* Had some acquaintance with Love; saw him last in December at Nelson's.

*Mr. Love.* Did he tell you he was afraid of being arrested for forgery?

(The Counsel for the People objected.)

*Mr. Love.* As there has been an attempt to show that the prisoners originated such a report, we wish to rebut all such presumption by showing Love's confessions long before he was missing.

The COURT. This evidence cannot be received. It is proved that such a report was in circulation before Love was missing. We have not admitted such testimony on the other side.

*William Thompson.* Was at the mill when Bennett came and

inquired for Love. Do not recollect that either of the three boys was there. The old man and some other persons were present. The old man said he believed Love went the evening before to his house.

*Z. Skinner.* Saw Isaac give his notes, two notes, for a rifle to Ogden, of whom he bought it. He had a rifle of his own before that, for, say, a year. Did not know or hear of his having any other.

*Mr. West.* The grave was about 14 or 16 inches deep and a little rising of four feet long. The dirt on the body was about six or eight inches deep.

*Mr. Sprague.* Love's body lay bent down in the middle, and at that point the dirt was about 12 inches deep; the feet and head up a little, the feet pressed against the foot of the grave. The dirt had been frozen down to the body. It was close to the log on the southeast side. Think the bushes shaded the grave-stone.

*Mr. Jones.* If Israel had a gun I think I should have seen it in searching in his house for property to levy upon.

*Daniel Pierce.* Israel had no gun; he once brought one from his father's, but I do not recollect the time. He set it up by the side of the house, but I do not recollect whether it was before or after we killed hogs.

*N. Smith.* Saw Love's colt at B. Fowler's grocery, in Buffalo, a few days after it was sold to him. Fowler told me he had just bought it. It was the same colt that Love owned.

MR. SMITH, FOR THE PEOPLE.<sup>2</sup>

*Mr. Smith.* Gentlemen: I rise to address you on this occasion, under a peculiar sense of inability, to do justice to a cause of such magnitude. After an incessant and laborious investigation of two days, I find myself too far exhausted to enter upon the discussion of a cause embracing such a vast variety of circumstances, and involving interests so deep and so vital. I feel conscious that in attempting to perform the part, which falls to my lot in this matter, I must fall far short of what the public have a right to expect, and what my duty seems to require. But relying on your candor and your indulgence, I shall proceed to reply to the able and eloquent arguments which have been offered on the part of the prisoners, and to which I must acknowledge I have listened with equal pleasure and respect. And while I attempt to lay before you the nature and merits of this prosecution on the part of the People, and to illustrate those principles of law and rules of evidence, which I consider as applicable to this case, and which are usually made to govern such a state of facts as are before you, may I be permitted to hope that I shall be able in some measure to facilitate your inquiries, that my efforts, feeble as they may be, will afford you some little aid in performing the arduous, painful, and solemn duty that devolves upon you. The station which you occupy today is the most exalted and awfully responsible of any in which you ever have been, or can be placed. The duty you have to perform is thrown upon you by your relative situation as members of society; and although it be laborious and painful, yet the consolation you will derive from a faithful discharge of that duty will, I trust, yield you an ample reward. Such has hitherto been the state of society, in this highly favored country, that our courts have rarely had to

<sup>2</sup>*Mr. Griffin* and *Mr. Allen*, for the defense, and *Mr. Brown*, for the People, addressed the Jury at length, but "as these gentlemen," the old report says, "left town immediately after the trial, we were unable to get correct reports of their speeches."



sit in judgment upon crimes of so foul a nature as the one detailed before you; and it is to be hoped that the day is turb the public peace, to agitate and shock the public feeling. distant when another transaction like this shall occur to disturb it. But it is to be feared that the age in which we live is becoming more and more corrupt; that the perpetration of crimes is becoming more and more frequent. If this be so, it adds much to the responsibility of those who are intrusted with the administration of public justice, and the preservation of public peace. Everything that we possess, or consider as worth possessing, in this life, depends essentially upon the purity, vigilance, and firmness of our courts and our juries. They are the guardians of society. It is to them that we look for protection against all those overwhelming evils that flow from human depravity; and without their protection our very lives are insecure. You cannot, therefore, fail of being deeply penetrated with a sense of the importance of the trust confided to you, and I will not doubt but that trust will be, by you, faithfully and conscientiously executed. If, unfortunately, you had imbibed prepossessions, respecting this transaction, it will be your duty to discard them, so far at least, as the frailty of human nature will admit. The remarks of the counsel for the prisoners on this point are highly worthy of your consideration. And do not, I entreat you, gentlemen, consider this caution as a censure upon you; for prejudice is incident to all human nature. No man can boast an exemption from it. And the little experience I have had in courts of justice has taught me that prejudice, particularly on the minds of a jury, is a most formidable foe to the administration of public justice. It exerts an insidious and powerful influence; and the mind the most under its bias is often the least conscious of its power. We wish you to try this cause, gentlemen, upon the naked facts that have been laid before you, since you entered that box; and if these facts, alone and independent of all other considerations, are not sufficient to convince you, beyond a rational doubt, of the prisoners' guilt, we entreat you to acquit them. But if these facts and circumstances are suffi-

cient to satisfy you, beyond a reasonable doubt, that they did commit the crime with which they are charged, it will be your imperious duty to pronounce them guilty.

The prisoners at the bar, as you have already heard, together with two others, are indicted for the murder of John Love. With the charges against Israel Thayer, Sr., and Nelson Thayer you have nothing to do. Your inquiries are to be confined to Isaac Thayer and Israel Thayer, Jr., and them only; and the grand question for your consideration will be, Were they, in any manner, engaged or concerned in the murder of John Love? For it is perfectly immaterial who gave the fatal blow; whether they, or any other person, known or unknown, provided they were actually present, aiding and assisting, when the blow was given; for in that case the law makes the blow of one the blow of all; and all who are present, aiding and assisting, when a murder is committed, are equally guilty.

The fact that there has been a murder committed, and which is necessarily made the foundation of all prosecutions of this sort, is established by the most unequivocal testimony, and is in fact, conceded by the counsel for the prisoners. It will therefore be unnecessary for me to read you the law defining the crime, or showing the distinctions between murder and the other kinds of homicide.

The murder of John Love being established, to fix the crime upon the prisoners at the bar, we have recourse to a train of circumstances disclosed in the testimony. But here we are met, by the counsel for the prisoners, with an objection to this species of testimony.

The learned counsel have strenuously contended against relying on presumptive evidence in capital cases; and to show you the danger of resting a conviction on circumstantial testimony, they have read several cases from the appendix to Phillip's Treatise on Evidence. But, gentlemen, before you yield too far to their persuasions in this particular, I trust you will pause and reflect, for a moment, on the danger of rejecting this species of testimony. The essay on circumstantial evidence, contained in the appendix to Phillips' Evi-

dence, from which the counsel for the accused have read several extracts, is not the law of the land. It has never been adopted by this or any other country; and to show that it is scouted by the courts of this State, I will read you a case from one of our own reports.<sup>b</sup> The principles of presumptive evidence, as recognized by the courts of this country, is not a novel doctrine. It is a doctrine coeval with civil society. It has been matured by the wisdom and experience of ages; by men of the greatest learning and acquirements; by judges whose lives were an ornament to the age and country in which they lived, and whose names will be remembered, so long as time shall last, or virtue and wisdom be considered praiseworthy among mankind. This doctrine, thus matured and perfected, has been incorporated into, and become a part of, the law of this country. It is too salutary, and too firmly established, to be assailed with success at this day. It cannot be overthrown, and it is well that it cannot. To explode it, would be to prostrate the barriers of personal security, and uproot the very foundations of civil society. High crimes are generally perpetrated with secrecy and caution, usually in the dead of night, as in this case, when the world is wrapped in silence and sleep, when darkness covers the wretch and his deeds from every mortal eye. To require the testimony of eye witnesses to convict in such cases, would be to give all felons full license to extend their ravages at will, to prowl upon the community, undetected and unrestrained.

Let us for a moment attend to the inducements which the prisoners had to the perpetration of this crime. Men do not act without a motive, says one of the learned counsel for the accused. Let us see if they had a motive in this case. It appears that Isaac Thayer, one of the prisoners, had confessed judgments to John Love, the deceased, to the amount of \$275. This debt had been contracted by the three brothers, whose property had been shifted into Isaac's hands, for the very purpose of securing that debt. Executions had been taken out, and the property of the three brothers was liable to be

<sup>b</sup> *Mr. Smith* here cited the trial of *How*, 6 Am. St. Tr.

sold, whenever Love should direct; and as they had no means of discharging that debt, they had no way to save their property from being sacrificed, but to make way with John Love. It is known, too, that Love had about him considerable money, and other property.

In approaching the evidence in this case, the first prominent fact that strikes our attention, is the circumstance of Love being seen in company with the accused, on the evening of the 15th of December (which was the last time he was seen living), and starting with the accused from the house of Nelson Thayer, to go to the house of Israel Thayer, Jr., for the avowed purpose of staying all night. This fact is established by the testimony of four witnesses. Isaac Thayer, in his examination before the magistrate, admits that Love was at the house of Israel, on that night; and this is the last that is ever heard of Love, until his mangled body is taken from a shallow grave, not thirty rods from that fatal spot. This single fact, unexplained as it is, raises a violent presumption of guilt against the accused. The next remarkable circumstance is the report of a gun, heard on the same evening of the 15th of December at or near the house of Israel Thayer. This fact is proved by a great number of witnesses; and although they do not agree as to the time of night, which was, indeed, not to be expected, yet there can be no doubt of the fact. It may be well here to attend to some evidences of preconcert, by which it will appear most obvious, that this murder was the result of arrangement and premeditation. Sylvester Irish says that about the 15th of December, he does not exactly remember the day, Isaac brought a rifle to witness' house, under a pretense of getting it cut over; and although he was told that the rifle could not be cut, he still left it standing behind the door. This house is only forty rods from Israel Thayer's. In the afternoon of the 15th of December, the day preceding the murder, the boy living at Israel's is sent home to his father's to stay all night; and in the evening the wife of Israel is conducted over to Irish's for an evening's visit. On her arriving at Irish's, she finds Isaac there. Her husband immediately goes back, and soon after Isaac goes out, and

does not return for some time. These seem to have been the arrangements; and this particular time chosen, because Israel had been killing hogs that day, and blood would necessarily be scattered about the house. These facts appear to be too plain to be misunderstood. The bringing of Israel's wife to the house of Irish seems to have been the signal for Isaac, who was there waiting, to seize the rifle, previously concealed at the same house, and repair to the house of Israel, and commence the horrid work; which he undoubtedly did, by shooting in at the window, whilst the other two brothers were in the house with Love, ready to give the finishing blow.

This conclusion is rendered the more probable, from the appearance of the body of the deceased when found. The body was found with a ball hole through the head; the skull fractured on the back part; one side of the face cleft off, apparently with an axe; and a deadly wound across the throat, severing the breath pipe; from which it is evident that two or three persons must have taken each a part in the horrid transaction. Here, gentlemen, I might rest this cause; satisfied that these facts would be sufficient to warrant you in pronouncing the prisoners guilty. But there are other circumstances which must not be omitted; one of the most remarkable of which is, the transfer of Love's property from his possession to that of the Thayers. No sooner is Love missing than the prisoners become suddenly and unaccountably in possession of Love's property, even the very horse on which he rode to the place of his death is found on the same spot, in the stable of Israel Thayer, who claims it as his own. Nor are the means by which they got possession of some of this property unworthy of your consideration. They forged orders and a general power of attorney, authorizing Isaac Thayer to collect all John Love's debts. This power of attorney they produced in courts of justice, and proved it genuine by their own oaths, when necessary. One of these forged orders from John Love bears date on the 16th of December, the very day after he was murdered. So that the body of the deceased was hardly cold beneath the turf, before they

were ransacking the neighborhood, in search of his property; and eagerly grasping their blood-stained fingers on all they could find. From a state of poverty and distress, harassed by constables, and unable to satisfy their importunities, the prisoners became suddenly clear of debt and flush with money; and even those very executions which Love had a few days before taken out against them, are found in their own pockets. (Here *Mr. Smith* made a review of the testimony showing the amount of property belonging to John Love which they had obtained, and recapitulated the various and inconsistent statements which they had made respecting the absence of Love, and then proceeded.) These, gentlemen, are the facts on which we rely to establish the prisoners' guilt. These are the facts which one of the learned counsel says are "trifles light as air," but which we say "are proofs as strong as holy writ." With such an uninterrupted concatenation of circumstances—such a train of guilt-proclaiming facts before us, all tending to the same point, all conspiring to establish the same awful truth, who will take it upon him to decry the power of circumstantial testimony or say that it is not equal to positive proof?

The murder of John Love was one of peculiar atrocity. The corruptest ages of the world hardly furnish its parallel. It was committed under the most aggravating circumstances, and without excuse or palliation: Love was the friend of his murderers. He had lent them money, and shown them many favors; and on that fatal night which proved his last they decoy him to one of their houses, as a friend and a guest; and there butcher him, in cold blood, as they had done their swine the day before! They then rifle his pockets, and proceed to purloin all his effects, to be found in the neighborhood; adding robbery and theft to the crime of murder. Nor does their career of iniquity end here. Ascertaining that he had money in the hands of other persons, they proceed to collect those moneys by means of forged papers, and protect themselves by swearing, in the name and presence of that God whose laws they thus violated, that those papers were genuine. What a dismal catalogue of crimes do we here

behold! Murder, robbery, theft, forgery and finally perjury; all committed in the course of a few days, by the same persons, and to attain the same object; namely, the acquisition of a few hundred dollars in money and property. If there be any part of this transaction more strange and unnatural than the rest, it is the hardness of heart, the blindness of mind, and the perverseness of soul, which characterized these men, in their mad, unhallowed career. It is rare that the perpetrators of high crimes, appear so perfectly steeled against all the compunctions of conscience. The murderer is usually supported, until he has actually done the fatal deed. But when he has given the deadly blow, and sees the victim of his malice fall and gasp beneath his feet, his courage fails him, and he relents. He begins to reflect on the enormity of his crime; and guilt and remorse, with all their soul-tormenting horror, seize upon him; thrill through every nerve, and pierce his heart with unsupportable anguish. He flees from society, and shuns the face of man. He hears, or thinks he hears, from frowning Heaven, the awful reproof, "What is this that thou hast done? The voice of thy brother's blood cries to me from the ground!" But the murderers of Love seem to have been beyond the reach of those feelings. They seem to have stifled every emotion of the heart calculated to arrest them, in their wild and fatal career. Without stopping to hear the friendly admonitions of that monitor within the breast, they rushed heedlessly on, from crime to crime, until they had reached a most awful and appalling climax of guilt.

Gentlemen, as I am to be followed by other counsel, I am not disposed to detain you longer. I have endeavored to discharge my duty in this matter, in such a manner as to satisfy my conscience. And if I have evinced more zeal than may be thought compatible with the accusing side of this prosecution, I earnestly ask, that it may be ascribed to a habit of speaking, and a sense of duty, rather than any improper motive, or want of feeling towards the accused. For had I been at liberty to indulge my sympathies, towards the accused, I could have wept over their misfortune and fate.

But I was not at liberty to do so. The public good is, and ought to be, an object paramount to every other consideration.

When we see the very neighborhood in which we live infested with crimes, at which humanity recoils, we ought to feel alarmed; and every citizen who participates in the benefits of the social compact ought to feel willing to see the offenders brought to justice; and to perform such parts as the laws of his country may assign him, with firmness and fidelity. Should such offenses escape detection and punishment, the most alarming consequences might well be apprehended. Encouraged by the imbecility and imperfection of human laws, the felon would crawl from his hiding place, and extend his depredations far and wide. A few dollars about the person of the citizen would only expose him to the rude and blood-stained hands of the assassin and the cut-throat. Society would lose all its endearments, and become a prey to fear, alarm, distrust and crime.

### THE VERDICT.

The *Jury* retired about 11 o'clock in the evening after an elaborate and solemn charge from JUDGE WALWORTH, and in about half an hour returned a verdict of *guilty* against both the prisoners.

### THE TRIAL OF NELSON THAYER.

April 23.

This morning, at 8 o'clock, commenced the trial of *Nelson Thayer*, on a separate indictment, for the same murder. The evidence on this trial was substantially the same as on that of Isaac and Israel. This cause was summed up on the part of the prisoners, by *Mr. Love* and *Mr. Griffin*, and on the part of the People by *Mr. Potter*. The *Jury* retired about 11 o'clock in the evening, after receiving a charge from the Court, and in a few minutes returned a verdict of *guilty*.



## THE SENTENCES.

*April 25.*

At 10 o'clock today the *prisoners* were brought to the bar to receive the sentence of the law.

JUDGE WALWORTH. Nelson Thayer, Israel Thayer, Jr., and Isaac Thayer: You have been indicted by the Grand Jury of this county for the murder of John Love, at the town of Boston, on the 15th of December last. You have respectively had fair and impartial trials, in which you have been aided by faithful and intelligent counsel. After a deliberate and patient investigation of your several cases, by Petit Juries, they have been constrained and compelled by their consciences and their oaths, to pronounce each and all of you guilty of a most foul and aggravated murder. Have you, or either of you, anything to say why the sentence of the law should not be pronounced against you, in pursuance of your conviction for this offense?

The feelings and emotions with which I enter upon the discharge of the solemn and important duty which devolves upon the Court, and which I am now about to perform, are too painful to be expressed. To pronounce the dreadful sentence which is to cut a fellow mortal off from society, to deprive him of existence, and to send him to the bar of his Creator and his God, where his everlasting destiny must be fixed for eternity, is at all times, and under any circumstances, painful to the Court. But to be compelled, at one and the same time, to consign to the gallows three young men who have just arrived at manhood, standing in the relation to each other of brothers, and connected with society in the tender relations of children, brothers, husbands and fathers, presses upon my feelings with a weight which I can neither resist nor express.

If in the discharge of this most painful duty that can ever devolve on any Court, I should in portraying the horrid circumstances of this case, make use of strong language to express the enormity of your guilt, and the deep depravity which it indicates, I wish you to rest assured it is not with any intention of wounding the feelings of your relatives, or for the purpose of adding one pang to your own afflictions, while the righteous hand of an offended God is pressing so heavily upon you. But it will be for the purpose, if possible, to awaken you to a proper sense of your awful situation, and to prepare you to meet the certain and ignominious death which shortly awaits you. It is to endeavor if possible to soften your hearts to produce a reformation in your feelings; that by contrition and repentance you may be enabled to shun a punishment infinitely more dreadful than any that can be inflicted by human laws—the eternal and irretrievable ruin of your guilty souls.

From the testimony which was given on the trials of your several cases, there is no room to doubt the certainty of your guilt, or the aggravated circumstances attending the perpetration of the bloody

deed. The man whom you have murdered was your companion and friend. He had loaned you money to relieve your necessities, and to support your families. He was the lenient creditor, renewing and exchanging his judgments and his executions from time to time to prevent the sacrifice of your property. He was the lodger of your father, and frequently enjoying the hospitalities of your own roofs. In the unsuspecting hour of private confidence, you decoyed him to the retired dwelling of Israel Thayer, Jr., and there, while he was enjoying the hospitality of the social fireside, you stole upon him unperceived—you aimed the deadly rifle at his head, and with the fatal axe you mangled and murdered your victim, mingling his blood with that of your butchered swine. But your guilt and depravity did not stop here. Scarcely had you committed his lifeless corpse to its shallow grave, before you began to collect and riot upon the spoils of his property. To the crime of murder you added those of theft, fraud and forgery, and repeatedly imprecated the vengeance of Heaven upon your perjured souls.

The punishment of death has been denounced against the crime of murder, not only by the laws of all civilized nations, but also by that law which was written by the pen of inspiration, under the dictation of the unerring wisdom of the Most High. And as God Himself has prescribed the righteous penalty for this offense, so there is strong reason to believe that very few murders are committed which are not ultimately discovered, and the wicked perpetrators thereof brought to merited punishment.

Wretched and deluded men! In vain was the foul deed perpetrated under cover of the darkness of the night; in vain was the mangled body of your murdered companion committed to the earth, and the lonely grave concealed by rubbish; in vain was the little boy sent home to his mother, and the unsuspecting wife removed from her house, that no human eye should be near to witness the foul and unnatural murder; in vain did you expect the snows of winter to conceal the grave, until the body of your victim could be no longer known and recognized. You forgot that the eye of your God was fixed upon you. The eye of God, who suffers not even a sparrow to fall without his notice. You forgot that you was in the presence of Him to whom the light of day and the darkness of midnight are the same: that He witnessed all your movements; that He could withhold the accustomed snows from falling on the earth, or His breath could melt them when fallen, leaving the grave uncovered and thus exposing you to detection and condemnation. His vengeance has at length overtaken you. The sword of human justice trembles over you, and is about to fall upon your guilty heads; you are about to take your final leave of this world, and to enter upon the untried retributions of a never-ending eternity. And I beg of you not to delude yourselves with vain hopes of pardon, which never can be realized. Your destiny for this world is fixed, and your fate is inevitable. Let me, therefore, entreat you, individually and collectively, by every motive, temporal and eternal, to reflect upon your present situation, and the certain death that shortly awaits you. There is but one who can pardon your offenses;

there is a Savior whose blood is sufficient to wash from your souls the guilty stains, even of a thousand murders. Let me, therefore, entreat you to fly to Him for that mercy and that pardon which you must not expect from mortals.

When you shall have returned to the solitude of your prison, where you will be permitted to remain for a few short weeks, let me entreat you by all that is still dear to you in time—by all that is dreadful in the retributions of eternity—that you seriously reflect upon your present situation, and upon the conduct of your past lives. Bring to your minds all the aggravated horrors of that dreadful night, when the soul of the murdered Love was sent unprepared into the presence of its God, where you must shortly meet it as an accusing spirit against you. Bring to your recollections the mortal struggles and dying groans of your murdered friend. Recollect the horror which seized you, while you dragged the mangled remains to the place of concealment. Think of the situation of your aged father, to whom you are indebted for your existence. Think of the grief of your distracted and disconsolate mother, who has nursed you in the lap of affection, and watched over the tender years of your infancy; who must now go down to the grave sorrowing over the ruins of her family. Think of the dreadful agonies, think of the unnatural and desolate widowhood to which you have reduced the unfortunate partners of your beds and of your bosoms. Think upon the situation of your poor orphan children, on whom you have entailed everlasting disgrace and infamy, and who are now to be left fatherless and unprotected to the mercy of the world. And when by such reflections as these your hard and obdurate hearts shall become softened, let me again entreat you, before your blood-stained hands are raised before the judgment seat of Christ, that you fly for mercy to the arms of a Savior and endeavor to seize upon the salvation of His cross.

Listen now to the dreadful sentence of the law; and then farewell forever, until the Court and you, with all this assembled audience, shall meet together in the general resurrection.

You and each of you are to be taken from hence to the prison from whence you came, and from thence to the place of execution, and there, on the 17th day of June next, between the hours of 12 at noon and 2 o'clock in the afternoon, you are to be hanged by the neck until you are dead.

And may that God, whose laws you have broken, and before whose dread tribunal you must then appear, have mercy on your souls!

### THE CONFESSION.

Soon afterwards, the three brothers made a full confession of the murder of John Love, to U. Torrey, the under Sheriff, in presence of witnesses, as follows:

They had contemplated the murder of John Love for four or five weeks, and it was concluded at length, that the deed should be per-

petrated on the 15th of December. That the boy, D. Pierce, on that night should be sent home, and the wife of Israel induced to make her visit, as is testified to. The rifle was loaded by Israel and left by a log near the house, of which he apprised Isaac, who was to make use of it, in the first instance. They had doubts whether they should be able to decoy Love to Israel's on that evening, but in case they did, it was arranged that Isaac could shoot him through the window while Nelson and Israel were engaged in cutting up the pork in the same room, and they were to despatch him in case the rifle failed to take complete effect. That about 7 o'clock or half past, and not later, for on this point the witnesses must have been in an error, while Nelson and Israel were in the room and Love was sitting before the fire with his boots and stockings and great coat off, in conversation with Nelson, his face partly turned towards Nelson and from the fire, Isaac came to the window as concerted, and shot him through the head, and immediately walked away to Irish's. Love did not fall, but convulsively drew up his feet and shoulders, and sat erect in the chair. Nelson then with the meat axe gave him the blow behind the ear, as described by the witnesses, which sallied him over a little; he then gave the second blow upon the back of the head, which brought him to the floor; he then inflicted the wound upon the face and neck as he lay upon the floor. Nelson does not recollect of giving but one blow, as described, on the face and neck, and doubtless the peculiarity of that wound and the appearance it presented of being the effect of two or more blows, results from the position in which he lay upon the floor. The body was then drawn out of the house by the two, and secreted near the end of the house; they finished cutting up the pork. Isaac then returned and exclaimed, "You have been butchering here, it seems;" to which Nelson replied that there had been butchering done. Isaac then said, "Well, I have done my part, and will do no more," and again went away. The blood upon the floor was then washed up, but there being some still upon the chair in which Love sat that was partly dried and difficult for them to wash off, a few pieces of bloody meat were put into the chair, which was by Israel's wife on her return laid away and the chair washed clean.

After the second departure of Isaac, the other two brothers took up the body and carried it to the brook, in the ravine, near the place of the grave, with the intention of burying it in the bottom of the brook; but after digging a few inches they were prevented from going further by rock. They then buried it where it was ultimately discovered. They then returned to the house, and from there went to Irish's; and all three of the brothers were there together, and stayed some time, and returned to Israel's, together with the wife. The father was perfectly innocent and ignorant of the murder.

Isaac states that when he first brought down the rifle to fire upon Love, his nerves failed him, and his aim was unsteady; but upon endeavoring to rally himself and reflecting upon some abuse Love had once used toward his aged mother, he regained his firmness, and fired with fatal effect.

As the day for their execution arrived, all of them became humble and penitent. They acknowledged the justice of their sentence and had no hope for commutation. Asked why they had done so foul a deed, Nelson replied that they had no other excuse than that Love had obtained through his successive small loans at high interest nearly all their property and was threatening to send them to prison. (Imprisonment for debt was in force at this time.) He added, "I thought I might as well run the risk of being hung as to lose my property and go to prison, too."

#### THE EXECUTIONS.

*June 17.*

At 2 o'clock today, Nelson, Israel, Jr., and Isaac Thayer were taken from the jail to an open field near Buffalo, and there were hanged on the same gallows in the presence of more than 20,000 people.